

**JUDICIAL COUNCIL OF CALIFORNIA
ADMINISTRATIVE OFFICE OF THE COURTS**

455 Golden Gate Avenue
San Francisco, California 94102-3688

Report

TO: Members of the Judicial Council

FROM: Criminal Law Advisory Committee
Hon. Steven Z. Perren, Chair
Joshua Weinstein, Committee Counsel, 415-865-7688,
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DATE: September 23, 2004

SUBJECT: Criminal Procedure: New Form for Identity Theft Victims, *Petition for Certificate of Identity Theft* (approve form CR-151) (Action Required)

Issue Statement

The Judicial Council adopted form CR-150, *Certificate of Identity Theft: Judicial Finding of Factual Innocence*, to protect identity theft victims when criminal cases erroneously proceed in their name. However, according to the California Department of Consumer Affairs, Office of Privacy Protection, there have been very few certificates requested because the procedure is unclear and daunting. The new form would allow an identity theft victims to petition the court for a certificate of identity theft.

Recommendation

The Criminal Law Advisory Committee recommends that the Judicial Council, effective January 1, 2005, approve form CR-151, *Petition for Certificate of Identity Theft* to assist identity theft victims in obtaining a judicial finding of identity theft under Penal Code section 530.6.

The text of the proposed form is attached at pages 3–5.

Rationale for Recommendation

Penal Code section 530.6 provides that identity theft victims may petition the court for a certificate of identity theft. The Judicial Council adopted a form certificate effective January 1, 2002, as required under that legislation. However, according to the California Department of Consumer Affairs, Office of Privacy Protection, there have been very few certificates requested because the procedure is unclear and difficult. Thus, they requested

that the Judicial Council develop forms for identity theft victims to petition for a certificate of identity theft under Penal Code section 530.6.

The proposed petition is an optional form that the identity theft victim would use to provide the court with information about the criminal case with which their name has been erroneously associated. The form calls for arrest and case information and the basis for the court to determine that the petitioner was erroneously associated with the case.

Alternative Actions Considered

As the legislation does not require the Judicial Council to implement forms in this area, the committee considered not proposing adoption of the form. However, the committee concluded that it would assist identity theft victims to provide this form.

Comments From Interested Parties

The proposal was circulated in the spring cycle. Nine comments were received. Four agreed with the proposal and five agreed if modified. Most of the suggested modifications were technical ones that were incorporated. Two suggestions, however, do not appear appropriate. The first one suggests that the form capture certain personal identifying information. However, on the form the petitioner is told he or she will have to provide that information if the petition is granted, but it is excluded from the form so as to not disseminate the information. The second suggestion asks if this procedure replaces Penal Code section 851.8 proceedings for sealing records after a finding of factual innocence. These are two separate procedures, with the identity theft procedure controlled by Penal Code section 530.6 for identity theft victims, and the Penal Code section 851.8 procedure for those where the court found someone was wrongfully prosecuted.

A chart summarizing the comments is attached at pages 6–8.

Implementation Requirements and Costs

Implementation costs for the forms would be limited to the cost of copying forms.

Attachments

SUPERIOR COURT OF CALIFORNIA, COUNTY OF STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME:	FOR COURT USE ONLY DRAFT #12 9/23/04 Not approved by the judicial council
PEOPLE OF THE STATE OF CALIFORNIA v. DEFENDANT:	
PETITION FOR CERTIFICATE OF IDENTITY THEFT (PEN. CODE, § 530.6)	CASE NUMBER:

1. a. Your name (*person asking for the certificate*):

Your address (*if you want your address to be private, give a mailing address instead*):

City:

State:

Zip Code:

Your telephone number (*optional*):

- b. Your lawyer, if you have one (*specify name, address, telephone number, and State Bar number below*):

Name:

Address:

Telephone number:

State Bar number:

2. I have been the victim of the crime of identity theft. (*If available, attach a copy of the report of the suspected crime of identity theft, issued by the local law enforcement agency that has jurisdiction over your actual residence. Mark the report as Attachment 2.*)
3. I need a *Certificate of Identity Theft: Judicial Finding of Factual Innocence*, because (*check applicable boxes **and** fill in applicable blanks*):
- a. ☐ An identity thief was cited in my name. (*Attach a copy of the citation, if available. Mark it as Attachment 3a.*)
- (1) Date of citation: (3) Citation number:
- (2) Violation of law stated in citation: (4) Agency that issued the citation:

This is not a Court Order.

PEOPLE OF THE STATE OF CALIFORNIA v. DEFENDANT:	CASE NUMBER:
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- b. ☐ An identity thief was arrested in my name. *(Attach a copy of the warrant, if available. Mark it as Attachment 3b.)*
- (1) Date of arrest: (3) Arresting agency:
(2) Arrest warrant number: (4) Agency that issued the warrant:
- c. ☐ An identity thief was convicted of a crime in my name. *(Attach a copy of the judgment of conviction, if available. Mark it as Attachment 3c.)*
- (1) Date of conviction: (3) Name of court:
(2) Crime: (4) Case number:
- d. ☐ A criminal complaint has been filed against an identity thief in my name. *(Attach a copy of the criminal complaint, if available. Mark it as Attachment 3d.)*
- (1) Name of court:
(2) Case number:
- e. ☐ My identity has been mistakenly associated with a record of criminal conviction.
- (1) Date of conviction:
(2) Case involved *(describe subject matter of case)*:
- f. ☐ I was arrested for a crime committed by an identity thief using my name. *(Attach a copy of the arrest warrant, if available. Mark it as Attachment 3f.)*
- (1) Date of arrest:
(2) Arrest warrant number:
(3) Agency that issued the warrant:
(4) Arresting agency:
(5) Date I submitted my petition to the arresting agency under Penal Code section 851.8:
(6) Date the arresting agency denied that petition:

(Attach copy of the petition, if available. Mark it as Attachment 3f).

4. There is no reasonable cause to believe that I committed the offense for which the identity thief was arrested, cited, convicted, or was the actual subject of a criminal complaint in my name; or there is reasonable cause to believe that my identity has been mistakenly associated with a record of criminal conviction.

This is not a Court Order.

PEOPLE OF THE STATE OF CALIFORNIA v. DEFENDANT:	CASE NUMBER:
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5. I will provide to the judge my basic personal identification information, such as my full name, date of birth, gender, weight, height, natural hair color, natural eye color, race, age, driver's license or identification number, and fingerprints (if required by the court); however, such information is not included in this petition in order to avoid further publishing the information.
6. The following additional facts and/or designated exhibits support this petition:

☐ Continued on Attachment 6.

7. I understand that the court may vacate the certificate of identity theft at any time if this petition, or any part of the information submitted in support of this petition, is found to contain any material misrepresentations or fraud.
8. Number of pages attached: _____

I declare under penalty of perjury under the laws of the state of California that the foregoing is true and correct.

Date:



Sign your name

Print your name

This is not a Court Order.

SPR04-21
New Form for Petition for Certificate of Identity Theft
(approve form CR-151)

	Commentator	Position	Comment on behalf of group?	Comment	Committee Response
1.	Hon. Stephen E. Benson Judge Superior Court of California, County of Butte Oroville	A	N	Agree with proposed changes. Excellent idea.	No response necessary.
2.	Timothy Gee Management Analyst Superior Court of California, County of San Mateo San Mateo	AM	N	Agree with proposed changes only if modified. There are significant problems with the caption of the document. The parties' titles are confused. The criminal case is the Peo. Vs. defendant. However, the Petition is being submitted by the defendant for relief, so the following should be the caption: The People of the State of California, Plaintiff/Respondent vs. Jane Doe, Defendant/Petitioner	Agree. Caption's changed to be defendant, as petitioner's name is first item.
3.	B. Gilbert Court Operations Supervisor Superior Court of California, County of Butte Oroville	A	N	Agree with proposed changes.	No response necessary.
4.	Ms. Kim Hubbard President Orange County Bar Association Irvine	A	Y	Agree with proposed changes.	No response necessary.
5.	Mr. Stephen V. Love Executive Officer Superior Court of California,	AM	N	Agree with proposed changes only if modified. The following comments were received from our	

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	County of San Diego San Diego			court managers: This form is insufficient in that it does not allow for specific identifying information (Sex, Ht., Wt., Hair, Color, Age, Race, Booking number, Driver License Number or other identifying information.)	
6.	Sharon Ngim Staff Liaison to the Standing Committee on the Delivery of Legal Services The State Bar of California	AM		Agree with proposed changes only if modified. At item 1, our reviewer suggests adding the words "if you have one," following the phrase "Your lawyer." Under item 5, our reviewer suggests inserting after "identification number," a comma followed by " <i>and fingerprint(s) if required by the court.</i> "	Agree.
7.	Jody Patel Court Executive Officer Superior Court of California, County of Sacramento Sacramento	AM		Agree with proposed changes only if modified. The language of the proposal raises several questions, including: Does the PC 530.6 process replace the PC 851.8 petition and process? It appears that this form would replace the 851.8 PC petition as it is inclusive of all types of issues or errors that cause people to have arrests and convictions erroneously attached to their reports.	No. Penal Code section 530.6 and 851.8 are independent.
8.	Tina Rasnow Coordinator Superior Court of California, County of Ventura Ventura	AM	N	Agree with proposed changes only if modified. New Form for Petition for Certificate of Identify Theft (approved form CR-151): This is a great form. I only have a few minor	Agree.

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	Commentator	Position	Comment on behalf of group?	Comment	Committee Response
				suggested changes: Under item 1, where it states “Your lawyer”, I would add the words “ <i>if you have one</i> ”. Under item 5 where it lists identifying information such as eye color, race, age, etc., I would delete the “and” after the word “age” and insert after “identification number” a common followed by “ <i>and fingerprint(s) if required by the court</i> ”.	
9.	Mr. Kent Vander Schuit Director, Public Law Center Superior Court of California, County of Nevada Nevada	A	N	Agree with proposed changes. Great idea. Is there such a form that could be used for avoiding civil responsibility for debts incurred because of identify theft?	No response necessary.